



6560-50-P

## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 52**

**[EPA-R04-OAR-2014-0507; FRL-9955-49-Region 4]**

#### **Air Plan Approval; FL Infrastructure Requirements for the 2010 1-hour NO<sub>2</sub> NAAQS**

**AGENCY:** Environmental Protection Agency.

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is taking final action to approve the State Implementation Plan (SIP) submission, submitted by the State of Florida, through the Florida Department of Environmental Protection (FDEP), on January 22, 2013, to demonstrate that the State meets certain infrastructure requirements of the Clean Air Act (CAA or Act) for the 2010 1-hour nitrogen dioxide (NO<sub>2</sub>) national ambient air quality standards (NAAQS). The CAA requires that each state adopt and submit a SIP for the implementation, maintenance and enforcement of each NAAQS promulgated by EPA, which is commonly referred to as an “infrastructure” SIP. FDEP certified that the Florida SIP contains provisions that ensure the 2010 1-hour NO<sub>2</sub> NAAQS is implemented, enforced, and maintained in Florida. EPA has determined that Florida’s infrastructure SIP submission, provided to EPA on January 22, 2013, satisfies certain required infrastructure elements for the 2010 1-hour NO<sub>2</sub> NAAQS.

**DATES:** This rule will be effective **[insert date 30 days after date of publication in the Federal Register]**.

**ADDRESSES:** EPA has established a docket for this action under Docket Identification No. EPA-R04-OAR-2014-0507. All documents in the docket are listed on the [www.regulations.gov](http://www.regulations.gov)

web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through [www.regulations.gov](http://www.regulations.gov) or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Richard Wong, Air Regulatory Management Section, Air Planning and Implementation Branch, Pesticides and Toxics Management Division, Region 4, U.S. Environmental Protection Agency, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. The telephone number is (404) 562-8726. Mr. Richard Wong can also be reached via electronic mail at [wong.richard@epa.gov](mailto:wong.richard@epa.gov).

## **SUPPLEMENTARY INFORMATION:**

### **I. Background and Overview**

On January 22, 2010 (75 FR 6474, February 9, 2010), EPA promulgated a new 1-hour primary NAAQS for NO<sub>2</sub> at a level of 100 parts per billion, based on a 3-year average of the 98th percentile of the yearly distribution of 1-hour daily maximum concentrations. Pursuant to

section 110(a)(1) of the CAA, states are required to submit SIPs meeting the requirements of section 110(a)(2) within three years after promulgation of a new or revised NAAQS or within such shorter period as EPA may prescribe. Section 110(a)(2) requires states to address basic SIP elements such as requirements for monitoring, basic program requirements and legal authority that are designed to assure attainment and maintenance of the NAAQS. States were required to submit such SIPs for the 2010 NO<sub>2</sub> NAAQS to EPA no later than January 22, 2013.

In a proposed rulemaking published on July 20, 2016 (81 FR 47094), EPA proposed to approve Florida's 2010 1-hour NO<sub>2</sub> NAAQS infrastructure SIP submission submitted on January 22, 2013, with the exception of the elements related to the ambient air quality monitoring and data system of section 110(a)(2)(B), and the prevention of significant deterioration (PSD) permitting requirements for major sources of sections 110(a)(2)(C), prong 3 of D(i), and (J). EPA is not acting on Florida's January 22, 2013, infrastructure SIP submission regarding the PSD permitting requirements for major sources of sections 110(a)(2)(C), prong 3 of D(i) and (J) for the 2010 1-hour NO<sub>2</sub> NAAQS because it previously approved these requirements. *See* 80 FR 14019, March 18, 2015. Regarding section 110(a)(2)(B), EPA is not taking any action on this portion of Florida's 2010 1-hour NO<sub>2</sub> NAAQS infrastructure SIP submission in this action and will instead address this requirement in a separate action. Also note that EPA did not propose any action regarding the interstate transport provisions pertaining to the contribution to nonattainment or interference with maintenance in other states of prongs 1 and 2 of section 110(a)(2)(D)(i) because Florida's January 22, 2013 SIP submission did not address these requirements. The details of Florida's submission and the rationale for EPA's actions for this final rulemaking are explained in the July 20, 2016, proposed rulemaking. Comments on the

proposed rulemaking were due on or before August 19, 2016. EPA received no adverse comments on the proposed action.

## **II. Final Action**

With the exception of the elements related to the ambient air quality monitoring and data system of section 110(a)(2)(B), and the PSD permitting requirements for major sources of sections 110(a)(2)(C), prong 3 of D(i), and (J), EPA is taking final action to approve Florida's infrastructure SIP submission for the 2010 1-hour NO<sub>2</sub> NAAQS submitted on January 22, 2013. EPA is taking final action to approve Florida's infrastructure SIP submission for the 2010 1-hour NO<sub>2</sub> NAAQS because the submission is consistent with section 110 of the CAA.

## **III. Statutory and Executive Order Reviews**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[insert date 60 days after date of publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: November 7, 2016.

Heather McTeer Toney,  
Regional Administrator,  
Region 4.

40 CFR part 52 is amended as follows:

**PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

**Subpart K--Florida**

2. In §52.520, the table in paragraph (e) is amended by adding the entry “110(a)(1) and (2)

Infrastructure Requirements for the 2010 1-hour NO<sub>2</sub> NAAQS” at the end of the table to read as follows:

**§52.520 Identification of plan.**

\* \* \* \*

(e) \* \* \*

**EPA-Approved Florida Non-Regulatory Provisions**

<b>Provision</b>	<b>State effective date</b>	<b>EPA approval date</b>	<b>Federal Register notice</b>	<b>Explanation</b>
**	**	*	*	*



110(a)(1) and (2) Infrastructure Requirements for the 2010 1- hour NO <sub>2</sub> NAAQS	1/22/2013	<b>[Insert date of publication in the Federal Register]</b>	<b>[Insert Federal Register citation]</b>	With the exception of sections: 110(a)(2)(B) concerning ambient air quality monitoring and data system; 110(a)(2)(C) and (J) concerning PSD permitting requirements; and 110(a)(2)(D)(i)( I) and (II) (prongs 1 through 3) concerning interstate transport requirements.
---	-----------	---	---	--

[FR Doc. 2016-28098 Filed: 11/22/2016 8:45 am; Publication Date: 11/23/2016]